IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 584

LOUISE LASSITER,

Appellant,

vs.

NORTHAMPTON COUNTY BOARD OF ELECTIONS.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

BRIEF OF APPELLANT

HERMAN L. TAYLOR
SAMUEL S. MITCHELL
125 East Hargett Street
Raleigh, North Carolina
Counsel for Appellant

Other Counsel

JAMES R. WALKER, JR.
Weldon, North Carolina

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Opinion Below

The Supreme Court of North Carolina filed written opinion in this cause on the 9th day of April, 1958. The said opinion is reported in the following publications: 248 N.C. 102; 102 S.E. 2d 853; 3 Race Rel. Law Rep. 495. This opinion of the Supreme Court of North Carolina is reproduced in the printed record before this Court, pages 19 to 33. The Judgment of the Supreme Court of North Carolina, entered on the 21st day of April, 1958, and affirming the judgment of the Superior Court of Northampton County, is reproduced in the printed record before this Court, page 34. The judgment of the Superior Court of Northampton County was entered during the August, 1957, Term and is

reproduced on pages 12 and 13 of the printed record before this Court.

Jurisdiction

The judgment of the Supreme Court of North Carolina was entered on the 21st day of April, 1958 (R. p. 34). Appellant's notice of appeal was filed in the Supreme Court of North Carolina on the 2nd day of July, 1958 (R. pp. 34-35). After the timely filing of Appellant's Statement as to Jurisdiction *in forma pauperis*, this Court entered an order granting appellant's motion for leave to proceed *in forma pauperis* on the 15th day of December, 1958, and on the same day entered an order noting probable jurisdiction (R. 39). See *Lassiter* v. *Northampton County Board of Elections*, Number 239 Miscellaneous, —— U.S. —— ; 79 S.Ct. 294; —— L.ed. ——. The jurisdiction of this Court rests upon 28 U.S.C. 1257(2), this being an appeal from the Supreme Court of the State of North Carolina in an action, "where is drawn in question the validity" of state statutory and constitutional enactments "on the ground of * * * being repugnant to the Constitutions, treaties or laws of the United States, the decision" below being in favor of the impleaded state statutory and constitutional enactments.

The action below involved the validity of the North Carolina educational test for prospective voters and applicants for the franchise, which educational test is provided by statute (North Carolina General Statutes 163-28 Amended April 12, 1957), and made mandatory by state constitutional provisions (North Carolina Constitution Article VI, Section 4). For the North Carolina Supreme Court's holding that the North Carolina educational tests for prospective voters is mandatory under the North Carolina Constitution, see *Allison* v. *Sharp*, 209 N.C. 477, 184 S.E. 27, and the opinion below in the instant case. In the

courts and tribunals below, appellant has meticulously and consistently asserted the unconstitutionality of North Carolina General Statute 163-28 et seq. and of the educational test therein provided, when measured by the standards of the 14th, 15th and 17th Amendments to the federal Constitution (R. pp. 2, 3, 4, 10, 11, 12, 13, 14, 15, 16 and 17). The validity of the said state Statutes and of Section 4, Article VI of the Constitution of North Carolina, which is held by the State Supreme Court to authorize and require the statutory, educational test (*Allison* v. *Sharp, supra; Lassiter* v. *Northampton County Board of Elections,* 248 N.C. 102, 102 S.E. 2d 853), as measured by the 14th, 15th and 17th Amendments to the federal Constitution, was expressly upheld and passed upon by the Supreme Court of North Carolina. See the printed record before this Court, pages 19 to 33 for the opinion below. Under this circumstance, little question can arise as to this Court's jurisdiction on appeal. See the jurisdictional question as considered in the following cases: *Harding* v. *Illinois,* 196 U.S. 78, 25 S.Ct. 176, 49 L.ed. 394; *Dahnke-Walker Milling Company* v. *Bondurant,* 257 U.S. 282, 42 S.Ct. 106, 66 L.ed. 239; *Beard* v. *City of Alexandria,* 341 U.S. 622, 71 S.Ct. 920, 95 L.ed. 1233; *Lovell* v. *City of Griffin, Ga.,* 303 U.S. 444, 58 S.Ct. 66, 82 L.ed. 949; *Chicago R. I. & P. R. Co.* v. *Perry,* 259 U.S. 548, 42 S.Ct. 524, 66 L.ed. 1056; *Home Insurance Co.* v. *Dick,* 281 U.S. 397, 50 S.Ct. 338, 74 L.ed. 926; *Nickey* v. *Mississippi,* 292 U.S. 393, 54 S.Ct. 743, 78 L.ed. 1323; *Whitefield* v. *Ohio,* 297 U.S. 431, 56 S.Ct. 532, 80 L.ed. 778; *People of Illinois ex rel. McCollum* v. *Board of Education of School District No. 71, Champaign, Ill.,* 333 U.S. 203, 68 S.Ct. 461, 92 L.ed. 648, 2 A.L.R. 2d 1338; *People of State of New York ex rel. Bryant Zimmerman,* 278 U.S. 63, 49 S.Ct. 61, 73 L.ed. 184.

Prior to the commencement of the instant cause in the Superior Court of Northampton County, North Carolina,

on the 2nd day of July, 1957, as an appeal from the Northampton County Board of Elections (R. p. 6), a Three Judge United States District Court had held Section 4 of Article VI of the North Carolina Constitution to be "void as violative of the provisions of the 14th and 15th Amendments to the Constitution of the United States." *Louise Lassiter* v. *Helen H. Taylor* (E.D. N.C. 1957), 152 F.Supp. 295, 2 Race Rel. Law Rep. 832. The appellant on this appeal was also plaintiff in the federal case as indicated by the entitlement. The United States District Court also stayed further proceeding before it and ordered an exhaustion of administrative remedies in the following language:

> "Before we take any action with respect to the Act of March 27, 1957, however, we think that it should be interpreted by the Supreme Court of North Carolina in the light of the provisions of the State Constitution. Government and Civic Employees Organizing Committee etc. v. S. F. Windsor (decided May 13, 1957, — U.S. ——). We think, also, that administrative remedies provided by the act should be exhausted before action by the federal courts is invoked. We shall accordingly enter an order staying action herein but retaining jurisdiction for a reasonable time to enable plaintiffs to take action in the courts of North Carolina to obtain an interpretation of the statute and to exhaust administrative remedies thereunder." *Lassiter* v. *Helen H. Taylor, supra.*

Pursuant to this explicit mandate, the instant case was commenced as an administrative proceeding before the precinct registrar involved (R. pp. 2, 3, 4, 5 and 6), and all unadjudicated constitutional questions were presented to the state courts for adjudications, even though the same issues were involved in the prior action which the Three Judge United States District Court had stayed. This man-

ner of proceeding is expressly required by this Court's Opinion in *Government and Civic Employees Committee, CIO* v. *Windsor*, 353 U.S. 364, 77 S.Ct. 838, 1 L.ed. (2d) 894 (1957).

While holding the state statute herein involved to be valid and not unconstitutional when measured by the standards of the 14th, 15th and 17th Amendments to the Constitution of the United States, the Supreme Court of North Carolina, in the opinion upon the instant Record, has undertaken to perform the feat of reviving Section 4 of Article VI of the North Carolina Constitution and of predicating the said statutory enactments entirely upon the "revived" constitutional provisions which the Three Judge District Court held to be void "when enacted." See *Louise Lassiter* v. *Helen H. Taylor*, *supra*. In view of the marriage of the statutory enactments, which purport to provide the educational tests, to the "revived" Section 4 of Article VI of the state constitution, which is thought to authorize and require the statutory enactments (*Allison* v. *Sharp*, *supra*; *Lassiter* v. *Northampton County Board of Elections*, *supra*), no question arises as to whether appellant's attack upon the North Carolina educational test for prospective voters and as to whether appellant's attack upon the statutory enactments containing the test is also an attack upon Section 4, Article VI of the Constitution of North Carolina which purports to require the test. See *People of Illinois ex rel. McCollum* v. *Board of Education of School District No. 71*, *supra*; *St. Louis Southwestern Ry. Co.* v. *State of Arkansas*, 217 U.S. 136, 30 S.Ct. 476, 54 L.ed. 698; *Terminello* v. *Chicago*, 337 U.S. 1, 69 S.Ct. 894, 93 L.ed. 1131. And it must be remembered that the North Carolina Supreme Court has invariably held that the North Carolina legislature is without authority to add to the qualifications of electors any other qualification which is not found in the State Constitution, *State* v. *Lattimore*, 120 N.C. 426, 26 S.E. 638

(1897); *State* v. *Scarboro*, 110 N.C. 232, 14 S.E. 737 (1892); *Spruill* v. *Bateman*, 162 N.C. 588, 77 S.E. 768 (1913); *People ex rel. Van Bokkelen* v. *Canaday*, 73 N.C. 198 (1875). See also North Carolina Constitution, Article VI, Section 1. Hence, there could be no educational test in North Carolina for the qualifications of electors without state constitutional authorization and an attack upon the educational qualifications is of necessity an attack upon the state constitutional provisions which purport to require the test. *People of Illinois ex rel. McCollum* v. *Board of Education, etc., supra; St. Louis Southwestern Ry. Co.* v. *State of Arkansas, supra; Terminello* v. *Chicago, supra.*

This analysis is not unmindful of the circumstance that the Supreme Court of North Carolina proceeded to hold valid the constitutional provisions which it "revived." See *North Carolina R. Co.* v. *Zackary*, 232 U.S. 248, 34 S.Ct. 305, 58 L.ed. 591; *Nickey* v. *Mississippi, supra; Home Insurance Co.* v. *Dick, supra,* where this Court held that the opinion of the state court is a part of the record in so far as its adjudication of the jurisdictional question is concerned. Hence, no question arises but that the validity of Section 4, Article VI of the Constitution of North Carolina, when tested by the 15th Amendment to the federal Constitution, is presented for review upon this appeal. Further, since the "revival" of Section 4, Article VI of the North Carolina Constitution was an act done in and by the state Supreme Court after the Three Judge District Court's ruling upon the constitutional provisions (*Louise Lassiter* v. *Helen H. Taylor, supra*), and since the state Supreme Court purported to impart the kiss of constitutional life to its resurrected creature, review by this Court of the validity of the constitutional provisions is available without consideration of meticulous niceties which are frequently involved in raising a federal question (*Saunders* v. *Shaw*, 244 U.S. 317, 37 S.Ct. 638, 61 L.ed. 1163). By force

of the arguments and contentions contained and suggested in the foregoing matter relating to jurisdiction and the Record before this Court, it is respectfully submitted that this Court has jurisdiction of the several questions presented on this appeal, as provided in 28 U.S.C. 1257(2).

State Constitutional and Statutory Provisions Involved

(a) *Section 4, Article VI, Constitution of North Carolina*

Section 4, Article VI, of the Constitution of North Carolina was declared void "when enacted" by a Three Judge United States District Court in June, 1957, *Louise Lassiter* v. *Helen H. Taylor* (E.D. N.C.), 152 F.Supp. 295, 2 Race Rel. Law Rep. 832. No review of this decision has ever been pursued in this Court. On the 9th day of April, 1958, the Supreme Court of North Carolina filed the opinion upon the instant Record which purports to revive the constitutional provisions above mentioned (R. pp. 19-33). See also *Lassiter* v. *Northampton County Board of Elections*, 248 N.C. 102, 102 S.E. 2d 853, 3 Race Rel. Law Rep. 495. The above mentioned constitutional provision is involved in the instant review and reads as follows:

> "Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language. But no male person who, on January 1, 1867, or at any time prior thereto, entitled to vote under the laws of any state in the United States wherein he then resided, and no lineal descendant of any such person, shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualifications herein prescribed: Provided, he shall have registered in accordance with the terms of this section prior to December 1, 1908. The General Assembly shall provide for the registration of all persons entitled to

vote without the educational qualifications herein prescribed, and shall, on or before November 1, 1908, provide for the making of a permanent record of such registration, and all persons so registered shall forever thereafter have the right to vote in all elections by the people in this State, unless disqualified under section two of this article."

(b) *North Carolina General Statutes, Chapter 163, Article 6*

North Carolina General Statutes, Chapter 163, Article 6, as re-written April, 1957, were held constitutional and valid in the opinion of the court below (R. pp. 19-33). See also *Lassiter v. Northampton County Board of Elections, supra.* The constitutionality of the above mentioned statutes is involved in the instant review, and they read as follows:

"Section 163-28. VOTER MUST BE ABLE TO READ AND WRITE; REGISTRAR TO ADMINISTER SECTION.—Every person presenting himself for registration shall be able to read and write any section of the Constitution of North Carolina in the English language. It shall be the duty of each registrar to administer the provisions of this section.

"Section 163-28.1. APPEAL FROM DENIAL OF REGISTRATION.—Any person who is denied registration for any reason may appeal the decision of the registrar to the county board of elections of the county in which the precinct is located. Notice of appeal shall be filed with the registrar who denied registration, on the day of denial or by 5:00 P. M. on the day following the day of denial. The notice of appeal shall be in writing, signed by the appealing party, and shall set forth the name age and address of the appealing party, and shall state the reasons for appeal.

"Section 163-28.2. HEARING ON APPEAL BEFORE COUNTY BOARD OF ELECTIONS.—Every registrar receiving a notice of appeal shall promptly file such notice with the county board of elections, and every person appealing to the county board of elections shall be entitled to a prompt and fair hearing on the question of such person's right and qualifications to register as a voter. A majority of the county board of elections shall be a quorum for the purpose of hearing appeals on the question of registration, and the decision of a majority of the members of the board shall be the decision of the board. All cases on appeal to a county board of elections shall be heard de novo, and the board is authorized to subpoena witnesses and to compel their attendance and testimony under oath, and is further authorized to subpoena papers and documents relevant to any matters pending before the board. If at the hearing the board shall find that the person appealing from the decision of the registrar is able to read and write any section of the Constitution of North Carolina in the English language and if the board further finds that such person meets all other requirements of law for registration as a voter in the precinct to which application was made, the board shall enter an order directing that such person be registered as a voter in the precinct from which the appeal was taken. The county board of elections shall not be authorized to order registration in any precinct other than the one from which an appeal has been taken. Each appealing party shall be notified of the board's decision in his case not later than ten (10) days after the hearing before the board.

"Section 163-28.3. APPEAL FROM COUNTY BOARD OF ELECTIONS TO SUPERIOR COURT.—Any person aggrieved

by a final order of a county board of elections may at any time within ten (10) days from the date of such order appeal therefrom to the superior court of the county in which the board is located. Upon such appeal, the appealing party shall be the plaintiff and the county board of elections shall be the defendant, and the matter shall be heard de novo in the superior court in the same manner as other civil actions are tried and disposed of therein. If the decision of the court be that the order of the county board of elections shall be set aside, then the court shall enter its order so providing and adjudging that such person is entitled to be registered as a qualified voter in the precinct to which application was originally made, and in such case the name of such person shall be entered on the registration books of that precinct. The court shall not be authorized to order the registration of any person in a precinct to which application was not made prior to the proceeding in court. From the judgment of the superior court an appeal may be taken to the Supreme Court in the same manner as other appeals are taken from judgments of such court in civil actions."

(c) *North Carolina General Statutes, Chapter 163, Article 8*

North Carolina General Statutes, Chapter 163, Article 8, was first enacted in 1901 and is still a part of the statutory law of North Carolina. See *Clark* v. *Statesville*, 139 N.C. 490, 52 S.E. 52 (1905). Article 8 is composed of General Statutes 163-32 through 163-42. The first Section of this Article reads as follows:

"Section 163-32. PERSONS ENTITLED TO PERMANENT REGISTRATION.—Every person claiming the benefit of section four of article six of the Constitution of North Carolina, as ratified at the general election on the sec-

ond day of August, one thousand nine hundred, and who shall be entitled to register upon the permanent record for registration provided for under said section four, shall prior to December first, one thousand nine hundred and eight, apply for registration to the officer charged with the registration of voters as prescribed by law in each regular election to be held in the State for members of the General Assembly, and such person shall take and subscribe before such officer an oath in the following form, viz.:

I am a citizen of the United States and of the State of North Carolina; I am ..... years of age. I was on the first day of January, A.D. one thousand eight hundred and sixty-seven, or prior to said date, entitled to vote under the constitution and laws of the state of ....., in which I then resided (or, I am a lineal descendant of ....., who was, on January one, one thousand eight hundred and sixty-seven, or prior to that date, entitled to vote under the constitution and laws of the state of ..... wherein he then resided)."

Questions Presented

The Court below has held that North Carolina General Statutes 163-28 et seq. and the educational test therein provided are valid and constitutional when tested by the Constitution of North Carolina. This holding is binding upon this Court, *In re Kemmler*, 136 U.S. 436, 10 S.Ct. 930, 34 L.ed. 519. However, the Court below has held that North Carolina General Statutes 163-28 *et seq.* do not offend the 14th, 15th and 17th Amendments to the federal Constitution. This holding presents appealable questions for this Court's jurisdiction, 28 U.S.C. 1257 (2). The Court below, by affirmance of the trial court's judgment and in the express language of its opinion, has held: (1) that the people of

North Carolina had the power in 1945 to authorize and require in their Constitution an educational test for prospective voters while exempting from the said test any male elector "who was, on January 1, 1867, or at any time prior thereto entitled to vote under the laws of any state in the United States wherein he then resided," and any "lineal descendant of any such person * * * provided he shall have registered in accordance with the terms of this section prior to December 1, 1908," and (2) that the federal Constitution affords no protection for the acquisition of the franchise other than an effete protection against racial privation which the State Supreme Court believes is offered by the 15th Amendment to the federal Constitution and which the State Supreme Court thought the people of North Carolina could subtly disregard. In short, the State Supreme Court has held: (1) that Section 4 of Article VI of the Constitution of North Carolina, in spite of its 1902 and 1945 preferential grant of the franchise is in direct conflict with the 15th Amendment to the federal Constitution. (See *Guinn* v. *United States*, 238 U.S. 347, 35 S.Ct. 926, 59 L.ed. 1340), had the miraculous efficacy in 1945, upon revival, of authorizing and validating a statutory scheme of disenfranchisement, which was within the pale of the 15th Amendment to the federal Constitution (North Carolina General Statutes 163-28 thru 42), and (2) that the Privileges and Immunities, Due Process and Equal Protection Clauses of the 14th Amendment and the 17th Amendment to the federal Constitution contain and provide no standards or requirements which the state is obliged to observe in the fashioning of law relative to the qualifications of voters. In the wake of these holdings the questions presented are as follows:

(a) Are North Carolina General Statutes 163-28 *et seq.* and Section 4, Article VI of the Constitution of North Carolina valid and constitutional, when measured by the standards of the Due Process Clause of the 14th

Amendment to the Federal Constitution, in so far as they purport to provide for a so called literacy test based upon the reading and writing of "any section" of the Constitution of North Carolina, as against appellant's contentions that the said test is arbitrary, capricious, subjective and without legal administrative standards?

(b) Are North Carolina General Statutes 163-28 *et seq.* and Section 4, Article VI of the Constitution of North Carolina valid and constitutional, when measured by the standards of the Equal Protection Clause of the 14th Amendment to the Federal Constitution, in so far as they purport to disfranchise the class of citizens who are otherwise entitled to the franchise, solely because of their lack of ability to read and write "any section" of the Constitution of North Carolina, as against appellant's contentions that the said statute is a discriminatory and arbitrary attempt to bestow the privilege of the franchise only upon the class of citizens who can read and write "any section" of the State Constitution?

(c) Are North Carolina General Statutes *et seq.* and Section 4, Article VI, Constitution of North Carolina valid and constitutional, when measured by the standards of the Privileges and Immunities Clause of the 14th Amendment to the Federal Constitution, in so far as they purport to disfranchise the class of citizens who are otherwise entitled to the franchise, solely because of their lack of ability to read and write "any section" of the Constitution of North Carolina, as against appellant's contentions that the said statute is an arbitrary denial of fundamental privileges and immunities of citizens of the United States.

(d) Are North Carolina General Statutes 163-28 *et seq.* and Section 4, Article VI, Constitution of North Carolina valid and constitutional; when measured by the standards of the 15th Amendment to the Federal Constitution, in so far as they are based and predicated entirely upon the purported 1945 revival of the 1902 invalid and unconstitutional provisions, to wit, Article VI, Section 4 of the Constitution of North Carolina, which constitutional Provisions purport to provide voting privileges for certain white citizens without exposure or subjection to the so called literacy test to which appellant, as a Negro, must be exposed and subjected?

(e) Are North Carolina General Statutes 163-28 *et seq.* and Section 4, Article VI, Constitution of North Carolina valid and constitutional, when measured by the standards of the 17th Amendment to the Federal Constitution, in so far as they deny to appellant the opportunity to participate in federal elections solely because of the inability to read "any section" of the Constitution of North Carolina, as against appellant's contention that said statute denies to her fundamental rights which are guaranteed by the Federal Constitution?

Statement

The appeal herein is from a final judgment of the Supreme Court of North Carolina (R. pp. 35 and 36). The instant action was heard in the Supreme Court of North Carolina as an appeal from the Superior Court of Northampton County, wherein appellant in said Court was plaintiff (R. pp. 19 and 20). The proceeding in the Superior Court of Northampton County was in turn an appeal from the Northampton County Board of Elections (R. pp. 4 and 6). On

the 22 day of June, 1957, appellant applied to the registrar of the Seaboard Precinct for registration as a voter (R. pp. 2, 7 and 8). This application was made pursuant to North Carolina General Statute 163-28. Relative to appellant's application to the registrar for registration as a voter, the Record in this cause discloses the following Stipulations:

"7. That upon presenting herself to the said registrar, the said Louise Lassiter subscribed to the oath generally and usually required of applicants for registration.

"8. That following the taking of and subscribing to said oath the said registrar, to wit, Mrs. Helen H. Taylor, presented to the said Louise Lassiter a printed copy of the Constitution of the State of North Carolina and requested that she read certain designated sections thereof.

"9. That the said Louise Lassiter declined and refused to read the proffered sections of the said Constitution, or any other section thereof, as a prerequisite to her being registered as a voter, for that the said Louise Lassiter contended and asserted and still contends and asserts that such requirement of reading said Constitution was and is unlawful, the same being in violation of the Constitution and laws of the State of North Carolina, and the Constitution and laws of the United States.

"10. That the said registrar, to wit, Mrs. Helen H. Taylor, upon the declining and refusing of the said Louise Lassiter to read the proffered sections of the Constitution of North Carolina, then and there refused to register and did not register the said Louise Lassiter, upon the ground that she, the said Louise Lassiter, failed to meet one of the prerequisites for

registration, namely, reading any section of the Constitution of North Carolina in the English language.

"11. That on the same day of refusal of registration to her, upon the ground hereinbefore set forth, to wit, on the 22nd day of June, 1957, and said Louise Lassiter gave written notice to the said registrar of appeal from said denial of registration by said register to the Board of Elections of Northampton County" (R. pp. 7 and 8).

Following the denial of registration by the registrar, appellant appealed in writing (R. pp. 2 and 3), to the Board of Elections of Northampton County, pursuant to the provisions of North Carolina General Statutes (163-28.1 and 163-28.2). Relative to appellant's appeal to the County Board of Elections, the Record in this cause discloses the following Stipulations:

"12. That on the 28th day of June, 1957, the appeal of the said Louise Lassiter from the denial of registration by the aforesaid registrar was heard by and before the Board of Elections of Northampton County, sitting and convened as a body and administrative board, in the Courthouse building of Northampton County, in Jackson, North Carolina.

"13. That the said Board of Elections of Northampton County, being duly constituted and convened, as aforesaid, heard and entertained the aforesaid appeal of the said Louise Lassiter *de novo*.

"14. That in said hearing and as a part of said hearing to determine the eligibility of the said Louise Lassiter to register as a voter, the said Board of Elections requested of the said Louise Lassiter that she read certain designated sections of the Constitution of North Carolina from a printed copy of said Constitution supplied her.

"15. That the said Louise Lassiter declined and refused the said Board's request and requirement that she read the proffered sections of said Constitution, or any other section thereof, as a prerequisite to her being registered as a voter, for that the said Louise Lassiter contended and asserted and still contends and asserts that such requirement of reading said Constitution was and is unlawful, the same being in violation of the Constitution and the laws of the State of North Carolina, and the Constitution and laws of the United States.

"16. That the said Board of Elections, upon the said Louise Lassiter's failing and refusing to read the proffered sections of the said Constitution, of any other sections thereof, issued a written order and directed that the said Louise Lassiter be denied registration as a voter in the Seaboard Precinct, upon the ground that she, the said Louise Lassiter, failed to meet one of the prerequisites for registration, namely, reading any section of the Constitution in the English language" (R. pp. 8 and 9).

Following the denial of registration by the Board of Elections of Northampton County, appellant appealed in writing (R. p. 4), to the Superior Court of Northampton County, pursuant to the provisions of North Carolina General Statute 163-28.3. Relative to appellant's educational abilities and qualifications, as the same appeared to and in the Superior Court of Northampton County, the Record in this cause discloses the following Stipulations:

"19. That the said Louise Lassiter, because of her lack of educational qualifications, on June 22, 1957, and continuously since said date until the present date, is unable to and has failed and refused to write and read.

or attempt to write or read, any section of the Con stitution of North Carolina, or any section of the Con stitution of the United States in the English language

"20. That aside from her failure, refusal and in ability to read or write any section or sections of the Constitution of North Carolina, or any section or sec tions of the Constitution of the United States in the English language, the said Louise Lassiter meets the other statutory qualifications for eligibility to be reg istered as a voter in Seaboard Precinct, Northampton County, North Carolina" (R. pp. 9 and 10).

In the Superior Court of Northampton County, the cause was submitted to the trial Judge upon an agreed state ment of facts, a jury trial being waived by both parties Prior to the entry of judgment, appellant made motion for a Directed Verdict and Finding in her favor, upon the ground that:

"the failure and refusal of the Registrar of the Seaboard Precinct of Northampton County and the failure and refusal of the Board of Elections of Northampton County to enter and cause to be entered her name upon the book of qualified registered voters because of her failure and refusal to read any section of the Con stitution of North Carolina as a prerequisite to being so registered, as required by North Carolina General Statutes, Section 163-28, as amended, is unlawful, as being in violation of Article VI, Section I of the Con stitution of the State of North Carolina, and in viola tion of the 14th, 15th, and 17th Amendments to the Constitution of the United States" (R. pp. 10 and 11).

This motion was denied by the trial Judge (R. p. 11). Prior to this entry of judgment, appellant also made a request

that the trial Judge make the following Conclusions of Law:

"1. That the requirement by the Registrar of Seaboard Precinct and by the Northampton County Board of Elections, in application of the provision of Section 163-28 of General Statutes of North Carolina, as amended, that the said Louise Lassiter be able to read or write any section of the Constitution of North Carolina, as a prerequisite to being registered as a qualified voter is unlawful, the same being in violation of Article VI, Section I of the Constitution of North Carolina, and in violation of the 14th, 15th, and 17th Amendments to the Constitution of the United States.

"2. That the said Louise Lassiter is entitled to be registered as a qualified voter in Seaboard Precinct of Northampton County free of and without regard to any requirement of reading or writing any section of the Constitution of North Carolina as a prerequisite to such registration" (R. p. 12).

This request was denied by the trial Judge (R. p. 12). To the judgment entered by the trial Judge of the Superior Court of Northampton County, which adjudged and decreed that appellant was not entitled to be registered as a voter, appellant objected and excepted, upon the ground that the trial court had sustained the validity of North Carolina General Statute 163-28 and the educational test presumably therein provided, whereas the said test is in conflict with the 14th, 15th, and 17th Amendments to the federal Constitution, as well as being in conflict with certain state constitutional provisions, and appealed to the Supreme Court of North Carolina, assigning these objections and exceptions as error (R. pp. 13, 14, 15, 16 and 17).

The Supreme Court of North Carolina affirmed the Judgment of the Superior Court, upon the ground that the edu-

cational test provided in North Carolina General Statute 163-28, amended, was not in conflict with the Constitution of North Carolina and upon the ground that said statute was not in conflict with the 14th, 15th and 17th Amendments to the Constitution of the United States (R. pp. 19 to 33). See also *Lassiter* v. *Board of Elections*, 248 N.C. 102; 102 S.E. 2d 853. Relative to appellant's Assignments of Error based upon the 14th, 15th and 17th Amendments to the Constitution of the United States, the State Supreme Court held as follows:

> "And the provisions of General Statute 163-28 apply alike to all persons who present themselves for registration to vote. There is no discrimination in favor of or against any by reason of race, creed or color. Hence there is no conflict with either the 14th, 15th or 17th Amendments to the Constitution of the United States," *Lassiter* v. *Board of Elections, supra* (R. p. 33).

Relative to Appellant's contention and Assignment of Error that North Carolina General Statutes 163-28 et seq. violate the State Constitution, the Supreme Court of North Carolina held as follows:

> "So, irrespective of the questions now raised, as to the validity of the provisions of the 1902 Amendment, and as to the effect thereof upon the provisions of Article VI of the Constitution of 1868 as amended by the Constitutional Convention of 1875, when the General Assembly came to consider the proposed amendment of 1945, Article VI then factually appeared intact and unchallenged. Therefore the provisions of the 1945 amendment must be considered in the light of this fact. Thus, when, as to who may vote, the General Assembly declared that 'Every person born in the United States and every person who has been natu-

ralized, twenty-one years of age, and possessing the qualifications set out in this article shall be entitled to vote * * * ,' the clause 'possessing the qualifications set out in this article,' was intended to mean, and was made certain by, the qualifications appearing upon the face of the Article VI, so unchallenged. And one of those qualifications was set forth in Section 4 of Article VI wherein it was required that 'Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language.'

" * * * In this light, the 1945 amendment so proposed and later adopted had the effect of incorporating and adopting anew the provisions as to the qualifications required of a voter as set out in Article VI. freed of the indivisibility clause of the 1902 amendment. And the way was made clear for the General Assembly to act," *Lassiter* v. *Board of Elections, supra* (R. p. 33).

The opinion of the State Supreme Court was entered on the 9th of April, 1958, and Judgment of the Court followed on the 21st day of April, 1958.

On the 2nd day of July, 1958, and within the time and manner provided by 28 U.S.C. 1257(2) and Rule 10 of the Revised Rules of this Court, appellant filed Notice of Appeal in the office of the Clerk of the Supreme Court of North Carolina to this Court, setting out the particular constitutional questions (R. pp. 35-38). After the service and filing of Appellant's Statement as to Jurisdiction, to which Defendant filed motion to dismiss, this court noted probable jurisdiction on the 15th of December, 1958 (R. p. 39).

ARGUMENT

I.

The Court Below Erred by Holding That the 1945 Amendment to Section 4, Article VI of the Constitution of North Carolina "Revived" the Said Constitutional Provision and That This "Revival" Has the Legal Force of Supporting the North Carolina Educational Test for Prospective Voters and of Supporting North Carolina General Statute 163-28 et seq. Which Contain and Provide the Educational Test.

The North Carolina constitutional provision upon which the Supreme Court of North Carolina hangs the statutory provisions involved in this litigation and the educational test for prospective voters were examined by a Three Judge United States District Court in 1957, *Louise Lassiter* v. *Helen H. Taylor*, 152 F.Supp. 295; 2 Race Rel. L. Rep. 832 (E.D. N.C. 1957). That Court held the constitutional provisions to be, "when enacted, void as violative of the provision of the 14th and 15th Amendments to the Constitution of the United States." No review by this Court has ever been sought in that action, and appellant herein was a party plaintiff before the United States District Court. It should be observed that Section 4, Article VI of the Constitution of North Carolina contains a "grandfather clause" embroidered upon its face such as was involved in *Guinn* v. *United States*, 238 U.S. 347, 35 S.Ct. 926, 59 L.ed. 1340 and in *Myers* v. *Anderson*, 238 U.S. 368, 35 S.Ct. 932, 59 L.ed. 1349. Though the provision purported to limit the registration period for "grandfather electors" to the period between the effective date of the enactment on January 25, 1901, and December 1, 1908, the measure also purports to extend the assurance of *permanent registration* to the

"grandfather electors." See North Carolina General Statute 163-32 et seq., which are the statutory implementations of the constitutional mandate for permanent registration of "grandfather electors." See also *Clark* v. *Statesville*, 139 N.C. 490, 52 S.E. 52, where the provisions are construed and interpreted by the Supreme Court of North Carolina. In view of the undisguised purpose of the constitutional provisions of placing a heavier burden upon the members of appellant's race, to wit, the Negro race, when they would seek the franchise, and of giving a substantial number of members of the white race a permanent preferential guaranty of the rights and privileges of the ballot, no question can arise as to the soundness of the Three Judge District Court's opinion in *Louise Lassiter* v. *Helen H. Taylor*, *supra*. See also *Lane* v. *Wilson*, 307 U.S. 268, 59 S.Ct. 872, 83 L.ed. 1281.

Nevertheless, the Supreme Court of North Carolina holds that when the people of North Carolina, by way of passing upon an amendment in 1945, substituted the word "person" for the word "male" in Section 1, Article VI of the state Constitution, in order to make the North Carolina suffrage provisions consonant with the 19th Amendment to the federal Constitution, they thereby enacted into law the Constitutional provisions which the 15th Amendment had barred in 1902, the date assigned as the effective date of the enactment. The North Carolina Supreme Court insists:

> "So, irrespective of the questions now raised, as to the validity of the provisions of the 1902 amendment, and as to the effect thereof upon the provisions of Article VI of the Constitution of 1868 as amended by the Constitutional Convention of 1875, when the General Assembly came to consider the proposed amendment of 1945, Article VI then factually appeared intact and unchallenged. Therefore the provisions of the 1945 amendment must be considered in the light of this

fact. Thus, when, as to who may vote, the Genera Assembly declared that 'Every person born in th United States, and every person who has been natura ized, 21 years of age, and possessing the qualification set out in this article shall be entitled to vote * * * the clause 'possessing the qualifications set out in thi article,' was intended to mean, and was made certai by (fol. 33), the qualifications appearing upon the fac of the Article VI, so unchallenged. And one of thos qualifications was set forth in Section 4 of Article V wherein it was required that 'Every person presentin himself for registration shall be able to read and writ any section of the Constitution in the English lan guage. * * * ' In this light, the 1945 amendment so pro posed and later adopted had the effect of incorporatin and adopting anew the provisions as to the qualifica tions required of a voter as set out in Article VI, free of the indivisibility clause of the 1902 amendment. An the way was made clear for the General Assembly t act" (R. pp. 31 and 32).

Obviously, the state court is of the erroneous impressi that the North Carolina electors in 1945, by way of revival could perpetuate, vouchsafe and confirm the very racia inequalities in the qualifications for and exercise of th franchise which the 15th Amendment to the federal Con stitution had barred and interdicted in 1902, when the elec tors initially sought to create and provide the racia inequalities relating to the franchise. In view of this Court holding in *Lane* v. *Wilson, supra,* it is impossible to sustai the proposition that the people of North Carolina can b such indirection or subtlety, render ineffective the prohib tions of the 15th and 14th Amendments to the federa constitution. Again, the North Carolina Supreme Court decision and action in holding that the people of Nort Carolina had revived Section 4 of Article VI, of the stat

Constitution with all of its racially offensive provisos, is in and of itself within the prohibitions of the 15th and 14th Amendments, *American Federation of Labor* v. *Swing*, 312 U.S. 321, 61 S.Ct. 568, 85 L.ed. 855; *Barrows* v. *Jackson*, 346 U.S. 249, 73 S.Ct. 1031, 97 L.ed. 1586. Again, the language of the State Supreme Court's opinion seems to assume that the 15th and 14th Amendments are concerned only with the creation of racial parity between appellant and white persons who *now apply* for registration for the franchise as distinguished from racial parity between appellant and white persons who *now enjoy* and exercise the franchise without having ever been subjected to the educational test provided in North Carolina General Statute 163-28 before its revision in 1957 or since. Indeed, the State Supreme Court has stated its views in the following language:

> "And the provisions of General Statute 163-28 apply alike to all persons who present themselves for registration to vote. There is no discrimination in favor of, or against any by reason of race, creed or color. Hence there is no conflict with either the 14th, 15th or 17th Amendments to the Constitution of the United States". (R. p. 33).

But the 15th and 14th Amendments have not been so circumscribed in their reach of racial discrimination as the court below has presumed. Included within the reach of these federal Constitutional provisions is racial discrimination in every facet of the exercise of the franchise, such as registration as a voter (*Lane* v. *Wilson, supra*), or voting in primary elections for federal office holders (*United States* v. *Classic*, 313 U.S. 299, 61 S.Ct. 1031, 85 L.ed. 1368; *Smith* v. *Allwright*, 321 U.S. 649, 64 S.Ct. 757, 88 L.ed. 987), or voting in pre-primary elections for federal office holders (*Adams* v. *Terry*, 345 U.S. 461, 73 S.Ct. 809, 97 L.ed. 1152),

or voting in general elections for federal office holders (*Ex parte Yarbrough*, 110 U.S. 651, 4 S.Ct. 152, 28 L.ed. 274; *United States* v. *Mosley*, 238 U.S. 383, 35 S.Ct. 904, 59 L.ed. 1355).

Finally, it cannot be said that the North Carolina scheme of exemptions from the educational test bestowed no benefit upon the class of applicants selected for preferential treatment. The United States Census Report for North Carolina reveals a potential white male voting population of 760,404 in 1940 (6th Census, United States, Characteristics of the Population of North Carolina). Of this number, more than 134,692 were over 53 years of age and presumably might have been eligible for registration under the "Grandfather Clause." Report reveals that in 1930 the total potential white, male voting population was 549,845. Of this number, more than 200,101 were over 43 years of age and presumably old enough to have sought registration under the "Grandfather Clause." The United States Census Report for North Carolina reveals a potential white, male voting population of 865,837 in 1950 (1950 United States Census of Population for North Carolina). Of this number, more than 81,696 were over 63 years of age and presumably might have been eligible for registration under the North Carolina "Grandfather Clause."

The State Supreme Court was careful in its Opinion to cite and approve its own 1936 opinion in *Allison* v. *Sharp*, *supra*, where the right of registration since 1908 is equated between the races, without notice of the fact that no such equality existed in 1945 or exists today, as between races in the ultimate exercise of the franchise because of the permanent registration of "grandfather elector" (North Carolina General Statute 163-32 et seq.), which is required by the constitution of North Carolina and by the North Carolina statutes, *Clark* v. *Statesville*, *supra*. It is clear

that the number of persons in 1945, who could have qualified for the franchise between 1902 and 1908 without subjection to the educational test, was a substantial number and that the discriminatory aspect of the provision was a living reality. And it can not be forgotten that North Carolina has applied this same educational test with its "grandfather exemptions" since the enactment of the constitutional provisions in 1902. See *Clark* v. *Statesville, supra; Allison* v. *Sharp, supra* (R. p. 29).

II.

The Court Below Erred by Holding That North Carolina General Statute 163-28 et seq. and the Educational Test Therein Provided for Prospective Voters, Is Constitutional When Measured by the 14th and 17th Amendments to the United States Constitution.

The Supreme Court of North Carolina has decided this case as though the sole federal, constitutional prohibition against state curtailment of the exercise of the franchise is upon racial or religious grounds. Indeed the court below states:

> "And the provisions of General Statute section 163-28 apply alike to all persons who present themselves for registration to vote. There is no discrimination in favor of or against any by reason of race, creed or color. Hence there is no conflict with either the 14th, 15th and 17th Amendments to the Constitution of the United States" (R. p. 33).

Nevertheless, appellant raised and preserved questions under the 14th and 17th Amendments to the United States Constitution relating to the appellant's contentions that: (1) the North Carolina Statutes provide an arbitrary,

capricious and subjective test without providing any legal administrative standards; (2) the North Carolina Statutes provide for unreasonable discrimination between persons who can read and write *any section* of the state Constitution and those who can not; (3) the North Carolina Statutes allow and provide an arbitrary and unreasonable denial of fundamental privileges and immunities of citizens of the United States, in so far as they withhold the franchise from unsuccessful applicants in the matter of elections of candidate for national office (R. pp. 10, 11, 13, 14, 15, 16, 17, 35, 36, 37 and 38). Appellant respectfully submits that the question as to whether North Carolina General Statutes 163-28 et seq. is constitutional, when measured by the standards of the Due Process, Equal Protection and Privileges and Immunities Clauses of the 14th Amendment and by the standards of the 17th Amendment to the federal Constitution presents substantial, federal questions which have not been foreclosed by decisions of this Court. It is observed that the question relative to a particular educational test has never been squarely before this Court for decision. Compare *Guinn* v. *United States,* 238 U.S. 347, 35 S.Ct. 926, 59 L.ed. 1340; *Williams* v. *Mississippi,* 170 U.S. 213, 18 S.Ct. 583, 42 L.ed. 1012. While the question was presented in the appeal in *Schnell et al.* v. *Davis et al.* (3 Judge D.C. Ala.), 81 F.Supp. 872, this Court's affirmance of the Three Judge District Court's opinion and decision was apparently based upon 15th Amendment consideration, in that this Court cited *Guinn* v. *United States, supra,* in support of its decision. See *Schnell et al.* v. *Davis et al.,* 336 U.S. 933, 69 S.Ct. 749, 93 L.ed. 1093. It should also be observed that all pronouncements by this Court relative to the validity of educational tests as a qualification for voters have been in an abstract and detached manner, rather than in reference to any particular case. Compare the *Guinn* and *Williams* cases, *supra.* Moreover, in the *Williams* case, *supra*

it is obvious that this Court was preoccupied primarily with consideration of a criminal jury system rather than with consideration attendant upon an applicant's right to vote or qualify for the franchise.

Language in several of the older opinions of this Court might tend to indicate that the several states are free to condition the exercise of the franchise upon whatever qualifications or conditions which the states may desire or impose, and that except for racial or religious prohibitions, as found in the 15th and 14th Amendments to the federal Constitution, the federal Constitution and its 14th and 17th Amendments in particular, provide no protection or guaranty to the applicant for the franchise, even where the franchise for national elections is involved. (See *Pope* v. *Williams* (1904), 193 U.S. 621, 24 S.Ct. 573, 48 L.ed. 817; *Minor* v. *Happersett* (1874), 88 U.S. 162, 21 Wall. 162, 22 L.ed. 627.)

It is too late now to contend that the 17th Amendment to and Section 2 of Article I of the Constitution of the United States have placed the franchise, as it pertains to national elections, absolutely in the hands of the several states and beyond the control of the federal Constitution, *United States* v. *Classic*, 1941, 313 U.S. 299, 61 S.Ct. 1031, 85 L.ed. 1368; *United States* v. *Aczel*, 219 F. 917; *Smith* v. *Allwright*, *supra*. It is also too late to maintain that exercise of the franchise is not an attribute adhering in national citizenship, *United States* v. *Classic*, *supra*. This observation is confirmed by the recent passage in Congress of the 1957 Civil Rights Act and its context, which is now codified as Title 42, United States Code, Sections 1971 and 1975.

There can be no doubt as to the fundamental nature of the franchise in North Carolina and of registration for its exercise. North Carolina General Statute 9-1 permits the several counties to resort to voting registration lists for

prospective jurors. See *State* v. *Ingram*, 237 N.C. 197, 7
S.E. 2d 532. All elections in North Carolina are held pur
suant to the registration laws under which the educationa
test is prescribed. See Chapter 163, North Carolina Gen
eral Statutes. Registered voters are called upon to indicat
their choice in matters dealing with county and municipa
finances and bond issues and which affect their individua
property and tax liabilities, North Carolina General Stat
utes 153-91 *et seq.* and 160-388 *et seq.* Also, in the importan
field of education, registered voters are *purportedly* au
thorized to determine the important matter as to when
public school should be closed rather than to abide by con
stitutional mandates pertaining to non-segregation of pub
lic school students because of race. See the Pearsall Plan
North Carolina General Statute 115-265 *et seq.* Registra
tion as a voter in North Carolina is the sole criterion fo
eligibility for elective office, Section 7, Article VI, Con
stitution of North Carolina. See *Spruil* v. *Bateman*, 16
North Carolina 588, 77 S.E. 768. Without further seekin
to exhaust the many privileges adjunct to the franchise i
North Carolina, it is obvious that obtaining and exercisin
the franchise in North Carolina is more than a mer
privilege and that the deprivation of the franchise is
substantial diminution of the privileges and immunitie
of citizenship as delineated in the 14th Amendment to th
federal Constitution. It is further submitted that Congres
had the power in 1957, under the 14th and 17th Amendment
to the federal Constitution, to confirm and secure to th
citizens of the several states their rights to the franchis
without undue and unreasonable harassment. Compar
42 U.S.C. 197(b).

North Carolina is among four states which require th
reading and writing of a constitutional document as
prerequisite for registration as a voter. Her compatriot
are Georgia (Ga. Code Ann. Secs. 34-117 *et seq.*); Missis

sippi (Miss. Const. 1890, Sec. 240-253); South Carolina (S.C. Code, Sec. 23-62). But South Carolina permits registration of electors who own and have paid all taxes collectible during the previous year on property in the state which is assessed at three hundred dollars or more, without submission to the "so called literacy test." And Georgia allows registration upon proof of good character and an understanding of the duties of citizenship in a republican form of government as an alternative to the educational requirement. Although eighteen of forty-nine states require reading, with variance as to subject matter only, only the states mentioned above, along with *Alabama* (Title 17 Sec. 32, Ala. code), require the writing of a constitutional document. A survey also reveals that five of the eighteen states which require some type of reading, merely require that the applicant be able to write his name. They are *Connecticut* (Conn. Gen. Stat., Title 9, Sec. 12); *California* (Cal. Code, Elections Sec. 220); *Delaware* (Del. Code Ann., Title 15, Sec. 1701); *Maine* (Revised Statutes of Maine, Ch. 3, Sec. 2 and 20); *Massachusetts* (Ann. Laws of Mass. C. 51 Sec. 1). Thus, it is seen that except for Mississippi, there is "no precedent" for the North Carolina type of educational test. And it must be remembered that North Carolina does not even exempt the physically infirm from the necessity of qualifying upon her educational test. See *Voting Rights*: 3 Race Rel. Law Rep., pages 371 to 393.

The requirements that a prospective voter be able to *read and write any section* of the State Constitution approaches an absolute mark in arbitrariness and subjectivity. Compare *Yick Wo* v. *Hopkins*, 118 U.S. 356, 6 S.Ct. 1064, 34 L.ed. 220; *Connally* v. *General Construction Co.*, 269 U.S. 385, 46 S.Ct. 126, 70 L.ed. 322. This arbitrariness and subjectivity are made absolute by the various, onerous and meaningless hearings which the applicant is given, without benefit of administrative standards, and by the final ad-

ministrative hearing in the State Superior Court at the hands of a lay jury, which must concur unanimously and in jury chambers with the applicant before he is admitted to the enjoyment of the franchise. The 14th and 17th Amendments will not allow such "horseplay" with an applicant's right to the franchise irrespective of the fact that a state may prescribe reasonable requirement for voters. Compare *Schware* v. *Board of Bar Examiners,* 353 U.S. 232, 77 S.Ct. 752, 1 L.ed. 2d 796; *Konigsberg* v. *State Bar of California,* 353 U.S. 252, 77 S.Ct. 722, 1 L.ed. 2d 810.

It is respectfully submitted that if the North Carolina educational test is measured by the standards of the 14th and 17th Amendments, without differential treatment, but in full contemplation of the fundamental relationship of the franchise to citizenship, then North Carolina General Statute 163-28 *et seq.* and the educational test therein contained will be found unconstitutional as violative of the 14th and 17th Amendments to the United States Constitution.

Conclusion

For the foregoing reasons it is respectfully submitted that the judgment of the Supreme Court of North Carolina should be reversed; that this Court should hold the North Carolina educational test to be invalid and unconstitutional by reason of the matter involved in this appeal and that the Supreme Court of North Carolina be directed to allow appellant to be registered as a voter without being subjected to the educational test ostensibly provided by North Carolina General Statute 163-28 *et seq.*

Respectfully submitted,

HERMAN L. TAYLOR
SAMUEL S. MITCHELL
125 East Hargett Street
Raleigh, North Carolina

Counsel for Appellant

Other Counsel

JAMES R. WALKER, JR.
Weldon, North Carolina

R. O. MURPHY
Wilson, North Carolina